IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 26, 2005

STATE OF TENNESSEE v. ROBERT WAYNE PRYOR

Direct Appeal from the Circuit Court for Bedford County
No. 15247 Charles Lee, Judge

No. M2003-02981-CCA-R3-CD - Filed April 19, 2005

The Defendant, Robert Wayne Pryor, was convicted by a jury of theft of property valued at over $1,000 but less than $10,000, a class D felony. See Tenn. Code Ann. § 39-14-105(3). The trial court subsequently sentenced the Defendant to three and one-half years in the Department of Correction. In this direct appeal, the Defendant challenges the sufficiency of the evidence and contends that his sentence is excessive. Finding the evidence insufficient to support the jury verdict, we reverse and vacate the Defendant's conviction and dismiss the charge.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed; Conviction Vacated; Dismissed

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Gregory D. Smith, Clarksville, Tennessee, for the appellant, Robert Wayne Pryor.

Paul G. Summers, Attorney General and Reporter; Preston Shipp, Assistant Attorney General; Mike McCown, District Attorney General; and Michael Randles and Ann Filer, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Angie Bevels testified that, in December 2002, she was the assistant manager of Bestway Rentals in Shelbyville, Tennessee. On December 28, the Defendant came into the store and signed a contract for the rental of a fifty-three inch color television. The contract required the Defendant to make weekly payments for the set. Ms. Bevels stated that the fair market value of the television was approximately $3,000. The television was delivered to the Defendant's residence on December 30, 2002. The delivery was made by a Bestway delivery truck with a boxed cargo area.

On January 2, 2003, Ms. Bevels read in the newspaper that the Defendant had been arrested. She concluded that the contract for the television "would not be upheld," so she and another employee went to the Defendant's residence to retrieve the TV. When they arrived, they saw the Defendant's roommate's father, but neither the Defendant nor his roommate, John Bingham, Jr., was there. Nevertheless, Ms. Bevels entered and walked through the residence, looking for the TV. She testified that the television set was not in the Defendant's home.

Ms. Bevels went to the jail within the next few days to visit the Defendant and inquire about the television. She testified that the Defendant "stated, to the best of his knowledge, the TV was in the home before his arrest," which occurred on the morning of January 1, 2003. Ms. Bevels testified that the television set remained missing.

Shane King testified that he lived next door to the trailer which the Defendant shared with John Bingham, Jr. Mr. King stated that, on or about December 31, 2002, he saw a big screen television set sitting in the bed of a small pickup truck at the Defendant's residence. There were no Bestway markings on the truck. Mr. King testified that he saw this item at about three or four in the afternoon. He described the truck as looking like one he had seen there before. He then explained that John Bingham, Jr.'s father owned a truck like that, as did a girl down the street. Mr. King did not see anyone around the truck when he saw the TV. He was certain that he saw the TV before January 1st.

Police officer Rod Stacy testified that he was in the Defendant's trailer on the night of December 26, 2002, and at that time saw a small television set, one with a screen size of less than twenty inches. He was also in the Defendant's trailer several times on the night of December 31, 2002. At each of those times, he saw no big screen TV, but only the same small set that he had seen several nights earlier. During his first visits to the Defendant's trailer on New Year's Eve, Officer Stacy did not see the Defendant. On his final visit, however, the Defendant was there, asleep on the couch. Officer Stacy arrested the Defendant on unrelated charges at this time. The Defendant said nothing to Officer Stacy about a missing television set. On January 9, 2003, however, Officer Stacy took a report from the Defendant about the television set. The Defendant told Officer Stacy that someone had stolen the TV sometime on January 1st.

Officer Billy Smith was also in the Defendant's trailer on the night of December 26, and likewise stated that the only television he saw at that time was a small one. Officer Smith was at the Defendant's trailer again on New Year's Eve and saw the same small TV; he saw no big screen television in the residence. The Defendant said nothing to him about a missing television during his arrest.

Officer Smith was familiar with John Bingham, Sr.'s truck, and described it as a "small turquoise-greenish colored small pickup truck."

The Defendant testified, explaining that he had been living with John Bingham, Jr., for about two months as of the time in question. John Bingham, Jr., owned the trailer in which they lived. The Defendant was working part-time for Charlie Blackwell at the time.

The Defendant acknowledged renting the big screen television from Bestway and its delivery on December 30, 2002. The Defendant did not know what Mr. King saw on the 31st but did state that Mr. King had some animosity toward him. The Defendant explained that, on that 31st, he and his roommate loaded a "buffet" onto Mr. Bingham, Sr.'s truck and delivered it to Tommy Reid. The Defendant explained that the piece of furniture was very large. They returned from making the delivery at about noon. They then left to begin partying at about 1:30 that afternoon. The Defendant stated that the big screen television was in the trailer when he left.

The Defendant returned home at about two the next morning. He was "severely intoxicated" and walked straight to the couch and passed out. He did not notice whether the television was there or not. The next thing he knew, he was being arrested.

The Defendant testified that the door to the trailer had been broken for some time and that it was widely known that it could be simply pushed open. The Defendant stated that he did not remove the television from the trailer and he did not know where it was. When she visited him at the jail, he told Ms. Bevels that it should have been there, and that it was there the last he knew. He stated that he tried repeatedly to file a police report about the missing television while he was in jail, but was not able to until he called his mother and had her make a three-way phone call to the police department. He did not do this until January 9, 2003.

Debra Brown, the Defendant's mother, testified that the Defendant called her on January 9 and asked her to place a three-way call to the police department. She complied and stayed on the line while the Defendant reported a burglary to his home.

Jamie Flora testified that she had formerly had a relationship with the Defendant, and that the Defendant was the father of her six-year-old child. She said that after she learned the Defendant was in jail, she went by the Defendant's trailer on January 2 to remove some of his personal belongings for safekeeping. When she arrived, several people were there, and the trailer appeared to have been ransacked.

After hearing this evidence, the jury determined the Defendant to be guilty of Class D felony theft.

ANALYSIS

The Defendant initially claims that the evidence is not sufficient to support his conviction. We agree.

Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn.

2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

"A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. § 39-14-103. In this case, the State established at trial that someone obtained or exercised control over the big screen television without Bestway's consent. The problem is that the State did not establish by sufficient proof the identity of the person so doing.

The identity of the perpetrator is an essential element of any crime. See State v. Thompson, 519 S.W.2d 789, 793 (Tenn. 1975). Thus, it is the State's burden to prove the identity of the defendant as the perpetrator beyond a reasonable doubt. See State v. Sneed, 908 S.W.2d 408, 410 (Tenn. Crim. App. 1995). Sufficient proof of the perpetrator's identity may be established through circumstantial evidence alone. See State v. Reid, 91 S.W.3d 247, 277 (Tenn. 2002). In such cases, however, the facts must be '"so clearly interwoven and connected that the finger of guilt is pointed unerringly at the Defendant and the Defendant alone."' Id. (quoting State v. Smith, 868 S.W.2d 561, 569 (Tenn. 1993)). That is, the circumstantial evidence must be not only consistent with the guilt of the defendant but it must also be inconsistent with his or her innocence and must exclude every other reasonable theory or hypothesis save that of guilt. See State v. Tharpe, 726 S.W.2d 896, 900 (Tenn. 1987). Additionally, the evidence "must establish such a certainty of guilt of the accused as to convince the mind beyond a reasonable doubt that [the defendant] is the one who committed the crime." Pruitt v. State, 3 Tenn. Crim. App. 256, 460 S.W.2d 385, 390 (Tenn. Crim. App. 1970).

In this case, the State adduced proof that someone removed the big-screen TV from the Defendant's residence and placed it in the bed of John Bingham, Sr.'s pickup truck sometime on December 31, 2002. The television set then disappeared. The record is completely devoid of evidence, however, that it was the Defendant who either removed the TV from his residence, directed its removal, or had anything to do with its disappearance. The proof established that the

Defendant lived in the residence from which the television set was removed. So did John Bingham, Jr. The television set was seen in a vehicle owned by John Bingham, Sr. The Defendant was not seen in the vicinity of the truck while it allegedly contained the television set. The Defendant made no incriminating statements to anyone about the fate or whereabouts of the television. No one identified the Defendant in any fashion as having exercised control over the television inconsistent with his contractual rights thereto. In short, there is simply no proof connecting the Defendant to the theft of the television.

The State contends that the jury was within its province in concluding that the Defendant was lying about the piece of furniture that he loaded onto the pickup truck, and that it was thereby entitled to infer that the Defendant actually moved the television set. While we agree with the first part of this contention, we must disagree with the second. A jury has the right to reject a defendant's testimony and to disbelieve a defendant's denial. If there is sufficient other proof from which to determine the defendant to be the perpetrator, the jury may do so. A jury may not, however, use the process of alchemy to transform a defendant's discredited testimony into affirmative evidence of guilt.[1] See Sullivan v. State, 513 S.W.2d 152, 154 (Tenn. Crim. App. 1974) ("A verdict of a jury may not be based alone upon conjecture, guess, speculation or a mere possibility.")

Proof of the Defendant's identity as the perpetrator in this case is purely circumstantial. Contrary to our well-settled case law, the facts actually proven by the State do not point unerringly at the Defendant and the Defendant alone as the person responsible for the theft of the television. The State having failed to prove beyond a reasonable doubt the identity of the Defendant as the perpetrator of the theft, we have no choice but to reverse the Defendant's conviction on grounds that the evidence is insufficient to support it.

The State failed to produce sufficient evidence to support the Defendant's conviction. Accordingly, we must reverse and vacate the Defendant's conviction and dismiss the indictment. Given our disposition of this matter, we decline to address as moot the Defendant's issue regarding sentencing.

_____

DAVID H. WELLES, JUDGE

[1] Significantly, the Defendant never claimed that Mr. King's identification of the television set was necessarily mistaken. Rather, on questioning, he responded that he did not know what Mr. King saw. The Defendant testified that he loaded the buffet into the truck on the morning of the 31st. He stated that he left the residence by 1:30 that afternoon after having delivered the buffet elsewhere. Mr. King testified that he saw the television set in the truck at approximately three or four o'clock that afternoon. Thus, even if the jury completely disbelieved everything the Defendant stated, it would still have to create proof that the Defendant was somehow responsible for the television set's location in the truck at the time Mr. King claimed to have seen it.